Filed 5/31/19 In re A.T. CA4/1

**NOT TO BE PUBLISHED IN OFFICIAL REPORTS**



COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

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| In re A.T., a Person Coming Under the Juvenile Court Law. | |
| THE PEOPLE,<br><br>Plaintiff and Respondent,<br><br>v.<br><br>A.T.,<br><br>Defendant and Appellant. | D074865<br><br>(Super. Ct. No. JCM241253) |

APPEAL from an order of the Superior Court of San Diego County, Aaron H. Katz, Judge. Affirmed.

Matthew R. Garcia, under appointment by the Court of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Julie L. Garland, Assistant Attorney General, Michael Pulos and Teresa Torreblanca, Deputy Attorneys General, for Plaintiff and Respondent.

In this case, the juvenile court made a true finding on a petition alleging A.T. (the Minor) committed misdemeanor grand theft from the person (Pen. Code,[1] § 487, subd. (c)). The Minor appeals, raising an issue that was not presented in the trial court. At the adjudication hearing, the Minor's defense was identity and alibi. On appeal, the Minor contends the evidence is insufficient to prove he took personal property *from the person* of the victim; thus, he was guilty only of petty theft. The issue is properly before us for review; however, the switch in defense strategy has left us with a sparse, but adequate record on the limited question of the manner of the taking.

Our review of the record supports an inference the Minor fraudulently got the victim to hand over the property at which point the Minor took it and fled. Applying relevant Supreme Court precedent, we find the manner of taking of the property was from the person of the victim. Accordingly, we will affirm.

## STATEMENT OF FACTS

This appeal does not dispute the facts of the offense, rather it presents a question of the interpretation of the facts and what inference the juvenile court could have drawn from them. We will adopt the Minor's factual statement from the opening brief to provide background for our analysis.

### A. The Prosecution Evidence

Anthony Fay sold phones and other electronic devices on the website Ebay and on a mobile application called "Offer Up." The Minor contacted Anthony about purchasing

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1 All further statutory references are to the Penal Code unless otherwise specified.

an iPhone 10 that was listed for sale on Offer Up for $775. They met on March 1, 2018, at a Starbucks at 7:30 p.m. to conduct the sale. The Minor arrived with a person named Mohamed who Anthony recognized from previous dealings.

Anthony and the Minor sat down at a table; Mohamed stood next to them. Anthony felt "bad vibes" from the Minor and Mohamed. Anthony asked the Minor what carrier he used. The Minor replied T-Mobile. Anthony said the phone would only work on AT&T or Cricket networks. The Minor replied that he could unlock the phone so that it would work on T-Mobile's network. Anthony viewed that as a red flag.

Anthony gave the iPhone to the Minor to inspect. The Minor looked over the phone for a minute. The Minor said, "this is a really nice phone" and asked how much it was. Anthony replied "$775." The Minor jumped up from the table and ran out of the Starbucks. Anthony chased the Minor into an alley, but stopped because it was dark and he did not want something bad to happen. Moments later, Mohamed ran down the alley from the same direction that the Minor and Anthony entered. As he ran by, Anthony tried to grab Mohamed, but missed. Anthony did not chase Mohamed.

Anthony went back to Starbucks, called the police, and filled out an incident report. Anthony input the phone number he had from prior dealings with Mohamed into Facebook. He found Mohamed's profile. Anthony searched through Mohamed's friend list and found a profile with the Minor's picture, and the name Hardin Foster. Anthony passed on the information to the police. He later identified the Minor out of a photo lineup at the police station. The photo lineup was admitted into evidence as Exhibit 4.

B. The Defense Evidence

The Minor testified. The date of the incident, he met up with four friends at Hoover High School, and ordered a Lyft[2] to go watch a basketball game in Carlsbad. A basketball team schedule was admitted as Exhibit 5. The Minor took a video of the basketball game from his phone. The video was admitted into evidence as Exhibit 6. The time and date on the video was March 1, 2018, at 6:06 p.m.

After the game, the Minor and his friends went outside where people started dancing. A crowd gathered and watched for 15 to 20 minutes. The Minor and his friends then walked to a gas station and ordered a Lyft home. The Lyft ride from the gas station to the Minor's friend's house took 58 minutes. The Lyft dropped the Minor off 15 minutes later. The Minor did not go to a Starbucks that night.

DISCUSSION

The Minor contends there is not sufficient evidence in the record to show that he took the telephone from the victim's physical possession, as opposed from only the victim's presence. Accordingly, he argues he is only guilty of petty theft.

The history of the evolution of common law theft offenses has been one of fine distinctions such as those in larceny, larceny by trick and false pretenses. So too have there been fine distinctions drawn between theft from the person, without force or fear, and larceny of personal property taken when the victim is present, but not in physical possession of the property taken. Once again, we must examine the question of whether

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2 Lyft is a rideshare company that matches passengers with drivers via a mobile application.

the property in this case was in the victim's physical possession when the Minor's unlawful taking with the intent to steal took place. Following more recent Supreme Court precedent, we conclude the evidence supports a finding the property was unlawfully taken from the victim's physical possession.

A. Legal Principles

When we review a challenge to the sufficiency of the evidence, we apply the familiar substantial evidence standard of review. Under that standard, we review the entire record, drawing all reasonable inferences in favor of the trial court's decision. We do not make credibility findings, nor do we reweigh the evidence. Our task is to determine if there is sufficient, substantial evidence from which the trial judge could have found every element of the offense to have been proved beyond a reasonable doubt. (*People v. Jones* (1990) 51 Cal.3d 294, 314.) We apply the same standards in reviewing a claim of insufficiency of the evidence in juvenile proceedings. (*In re Aaron J*. (2018) 22 Cal.App.5th 1038, 1058.)

Grand theft from the person (§ 487, subd. (c)), prohibits taking property from the person of another with the intent to steal. The classic case of such theft would be the pickpocket or the person who snatches a purse from someone using only the force necessary to move the property. (*People v. McElroy* (1897) 116 Cal. 583, 586.) In that case, the victim's property was taken from a pair of trousers, which he was not wearing at the time. Noting the crime at issue required a taking from the person, the court found that although the victim was close to the trousers, they were not on his person, hence the crime was ordinary larceny.

In *People v. Huggins* (1997) 51 Cal.App.4th 1654, 1657-1658, the victim's purse was on the floor when taken. However, since it was touching the victim's leg when it was taken, the appellate court found the taking was from the person. Similarly, in *In re George B.* (1991) 228 Cal.App.3d 1088, 1090-1092, the thief took a bag of groceries from a shopping cart the victim was pushing. The court again found the taking was from the person because the cart was the device being used by the victim to carry the groceries.

A contrary determination was reached in *People v. Williams* (1992) 9 Cal.App.4th 1465, 1471-1472. There, the victim had placed her purse on the passenger seat of her car. She then entered the car on the driver's side. The thief reached in the passenger side and took the purse. The appellate court concluded the purse was no longer in the victim's physical possession when taken; thus, the theft was an ordinary larceny.

In *People v. Smith* (1968) 268 Cal.App.2d 117, 120, the thief attempted to take the victim's wallet from his pants. A struggle followed in which the pants were torn off and the wallet fell to the ground. An accomplice picked up the wallet off the ground and took it away. The appellate court there concluded the wallet was on the ground as a result of the defendant's unlawful efforts to steal. Under those circumstances, the court found the theft was from the person.

In the case of *In re Jesus O.* (2007) 40 Cal.4th 859 (*Jesus O.*), our high court reviewed the caselaw evolution of grand theft from the person. The court continued to recognize the essential requirement of the offense being the taking of the property from the physical possession of the victim. The court also recognized, however, that not all takings require a single step in the taking. Rather, such taking could be done in a two-

step process where a wrongful act, done with the intent to steal, and the act separates the victim from the property that is taken.

In *Jesus O., supra,* 40 Cal.4th 859, the defendant and a cohort approached the victim, an elderly man and demanded money or property. They assaulted the victim and during the assault the victim's phone fell to the ground. The defendants picked up the phone and fled. Analyzing the facts of the case the court said:

> "In this case, the juveniles took the telephone from Mario's person with the intent to steal, although in two steps. First, they wrongly caused the telephone to become separated from the person; then they actually gained possession of it. The taking began with the initial assault, when the telephone was on the person, and only ended when the juveniles picked it up from the ground. Thus, and in response to the last paragraph of the dissent, the property *was* physically connected to the victim's person when the juvenile began to take it. The victim did not relinquish personal possession of the telephone voluntarily but only due to the juvenile's wrongful act. These facts pose a 'threat of injury or death' to the victim just as surely as—and perhaps more than—some of the cases upholding a finding of theft from the person, and thus satisfy the rationale for making theft from the person a more serious crime than ordinary theft." (*Id.* at p. 868.)

B. Analysis

In the present case, it is clear the court could find the Minor and his cohort intended to steal the victim's phone at their first opportunity. The Minor succeeded in separating the victim from the phone by the false representation he wanted to inspect it to purchase. His immediate, headlong flight from the location once he had the phone makes the Minor's intent crystal clear. We think this case is more akin to *People v. Smith, supra,* 268 Cal.App.2d 117 and *Jesus O., supra*, 40 Cal.4th 859 than it is to those cases where the victim relinquished physical possession voluntarily before the theft. The

juvenile court could reasonably find a single, two-step act by which the Minor got the phone away from the victim and immediately ran away with it. On the record before us, the court reasonably found the allegation of misdemeanor grand theft from the person to be true beyond a reasonable doubt.

## DISPOSITION

The true finding and disposition orders are affirmed.

HUFFMAN, Acting P. J.

WE CONCUR:

HALLER, J.

O'ROURKE, J.